



DAC 120

Docket No.: SON-2769
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Hidetoshi Ohnuma

Application No.: 10/603,689

Confirmation No.: 2872

Filed: June 26, 2003

Art Unit: 1756

For: EXPOSURE METHOD, MASK
FABRICATION METHOD, FABRICATION
METHOD OF SEMICONDUCTOR DEVICE
AND EXPOSURE APPARATUS

Examiner: D. C. Davis

**PETITION UNDER 37 C.F.R. § 1.181
TO REQUEST WITHDRAWAL OF FINAL OFFICE ACTION**

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby petitions for withdrawal of finality of the Office Action of July 11, 2007.

Applicant, seeking review of the prematureness of the final rejection within the Final Office Action, respectfully requests reconsideration of the finality of the Office Action for the reasons set forth hereinbelow. See M.P.E.P. §706.07(c).

The “second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement” (emphasis added). M.P.E.P. §706.07(a).

This is a petitionable issue because Applicant seeks review of the prematureness of the final rejection within that Office Action. 37 C.F.R. §1.181, M.P.E.P. §706.07(c).

Argument

Paragraph 2 of the non-final Office Action of January 12, 2007 indicates a rejection of claims 21-30 under 35 U.S.C. §102 as allegedly being anticipated by U.S. Patent Application No. 2001/0055733 to Irie et al. (Irie).

Within the Amendment in Response to Non-Final Office Action filed on April 3, 2007, claims 25 and 26 have been placed into independent form. **No other amendment** to either claim 25 or claim 26 is found within the Amendment in Response to Non-Final Office Action.

Nevertheless, paragraph 5 of the Final Office Action of July 11, 2007 include a rejection of claim 9 using U.S. Patent No. 6,593,037 to Gabriel et al. (Gabriel).

Paragraph 7 of the Final Office Action **admits** that the rejection found within paragraph 5 is **new grounds of rejection**.

Thus, the new rejection of claims 25 and 26 made within the Final Office Action is a new ground of rejection that is neither necessitated by applicant's amendment of claim 25 or 26 nor based on information submitted in an information disclosure statement.

Accordingly, the finality of the rejection of either claims 25 and 26 made within the Final Office Action is **premature** at least for this reason.

Relief

“If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection.” M.P.E.P. §706.07(d).

Accordingly, Applicant hereby petitions the Commissioner under 37 C.F.R. §1.181 to direct the examiner to withdraw the finality of the Office Action mailed in the above-identified application on July 11, 2007.

Fees

No fee is believed required to support this petition. See 37 C.F.R. §1.181.

However, if any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

For any comments or suggestions that could place this application in even better form, please telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

Dated: July 23, 2007

Respectfully submitted,

By 

Ronald P. Kananen

Registration No.: 24,104

RADER, FISHMAN & GRAUER PLLC

Correspondence Customer Number: 23353

Attorney for Applicant